

## 21 C.J.S. Courts § 232

Corpus Juris Secundum | May 2023 Update

### Courts

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### VI. Rules of Adjudication, Decisions, and Opinions

#### B. Stare Decisis

##### 5. Nature of Prior Decisions

## § 232. Summary or per curiam dispositions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, Courts  107

**A summary disposition by the United States Supreme Court has considerably less precedential value than an opinion on the merits while the summary opinions of some state courts have no precedential value.**

A summary disposition or affirmance by the United States Supreme Court has considerably less precedential value than an opinion on the merits<sup>1</sup> even though it is a decision on the merits.<sup>2</sup> Inferior federal courts, in determining the precedential value of a summary dismissal by the United States Supreme Court, should adhere to the view that if the Supreme Court has branded a question as unsubstantial, it remains so except when doctrinal developments indicate otherwise.<sup>3</sup> Since summary affirmances do not necessarily represent the United States Supreme Court's endorsement of a lower court's reasoning, a court of appeals looks primarily to the jurisdictional statement filed by the petitioner in the Supreme Court to determine what issues were presented and necessarily decided by the Court in its summary affirmance and also considers whether the facts presented in the former case are sufficiently analogous to those presented in the pending case.<sup>4</sup> The Supreme Court's holdings are confined to questions on which it grants certiorari.<sup>5</sup> A federal court of appeals is not bound by a district court decision affirmed by an unpublished summary order.<sup>6</sup> A summary affirmance by a state supreme court may have no precedential value.<sup>7</sup>

The precedential effect of a summary affirmance or dismissal can extend no farther than the precise issues presented and necessarily decided.<sup>8</sup> A summary disposition affirms only the judgment of the court below, and no more may be read into the court's action than is essential to sustain that judgment.<sup>9</sup> Questions that merely lurk in the record are not resolved, and no

resolution of them may be inferred.<sup>10</sup> Summary actions should also not be understood as breaking new ground but only as applying principles established by prior decisions to the particular facts involved.<sup>11</sup>

Indications that there have been doctrinal developments since the summary decision will relieve a lower court from the duty to adhere to it.<sup>12</sup> A United States Supreme Court order granting review, vacating the judgment below, and remanding for further consideration in light of some intervening development has no precedential weight and does not dictate how lower court should rule on remand.<sup>13</sup>

Although there is some authority that a per curiam decision without a written opinion has no precedential value<sup>14</sup> and only has effect insofar as the judgment is res judicata,<sup>15</sup> it has also been said that per curiam opinions have precedential value as an application of settled principles of law to the facts, but the court will use signed opinions when announcing new principles of law.<sup>16</sup> Also, when a state supreme court affirms by a per curiam order on the basis of the lower court's opinion, it signifies its agreement with the lower court's rationale.<sup>17</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Summary disposition by Supreme Court affirms only judgment of court below, and no more may be read into Court's action than was essential to sustain that judgment. [League of United Latin American Citizens v. Abbott, 951 F.3d 311 \(5th Cir. 2020\)](#).

As general matter, summary affirmances by Supreme Court reject specific challenges presented and prevent lower courts from coming to opposite conclusions on precise issues presented and necessarily decided by those actions. [League of United Latin American Citizens v. Abbott, 951 F.3d 311 \(5th Cir. 2020\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—Comptroller of Treasury of Maryland v. Wynne, 135 S. Ct. 1787, 191 L. Ed. 2d 813 (2015); Boggs v. Boggs, 520 U.S. 833, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1997); Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979); Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979).
- 2 U.S.—Boggs v. Boggs, 520 U.S. 833, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1997).
- 3 U.S.—Windsor v. U.S., 699 F.3d 169 (2d Cir. 2012), aff'd, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).
- 4 U.S.—Price v. Warden, 785 F.3d 1039 (5th Cir. 2015).
- 5 U.S.—Davis v. U.S., 564 U.S. 229, 131 S. Ct. 2419, 180 L. Ed. 2d 285, 68 A.L.R. Fed. 2d 665 (2011).
- 6 U.S.—Norex Petroleum Ltd. v. Access Industries, Inc., 416 F.3d 146 (2d Cir. 2005).
- 7 Minn.—Tereault v. Palmer, 413 N.W.2d 283 (Minn. Ct. App. 1987).

- 8 U.S.—Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979).
- Cal.—[Hoffman v. State Bar of California](#), 113 Cal. App. 4th 630, 6 Cal. Rptr. 3d 592 (1st Dist. 2003).
- Mich.—Michigan Beer & Wine Wholesalers Ass'n v. Attorney General, 142 Mich. App. 294, 370 N.W.2d 328 (1985).
- Va.—[Coleman v. City of Richmond](#), 6 Va. App. 296, 368 S.E.2d 298 (1988).
- 9 U.S.—Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979); Raleigh Wake Citizens Association v. Wake County Board of Elections, 2016 WL 1060378 (E.D. N.C. 2016).
- 10 U.S.—Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979).
- 11 U.S.—[Mandel v. Bradley](#), 432 U.S. 173, 97 S. Ct. 2238, 53 L. Ed. 2d 199 (1977).
- Mich.—Michigan Beer & Wine Wholesalers Ass'n v. Attorney General, 142 Mich. App. 294, 370 N.W.2d 328 (1985).
- 12 U.S.—[Lecates v. Justice of Peace Court No. 4 of State of Del.](#), 637 F.2d 898 (3d Cir. 1980).
- 13 U.S.—[Texas v. U.S.](#), 798 F.3d 1108 (D.C. Cir. 2015), cert. denied, 136 S. Ct. 981, 194 L. Ed. 2d 4 (2016).
- 14 Fla.—[St. Fort ex rel. St. Fort v. Post, Buckley, Schuh & Jernigan](#), 902 So. 2d 244 (Fla. 4th DCA 2005).
- 15 Fla.—[St. Fort ex rel. St. Fort v. Post, Buckley, Schuh & Jernigan](#), 902 So. 2d 244 (Fla. 4th DCA 2005).
- 16 W. Va.—[Stanley v. Department of Tax and Revenue](#), 217 W. Va. 65, 614 S.E.2d 712, 199 Ed. Law Rep. 482 (2005).
- 17 Pa.—[Richmond v. Prudential Property and Cas. Ins. Co.](#), 2004 PA Super 328, 856 A.2d 1260 (2004).